

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

JAMES CHARLES SMITH, #881812 §

VS. § CIVIL ACTION NO. 9:08cv50

DIRECTOR, TDCJ-CID §

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Petitioner filed objections to the Report. Petitioner's objections state that he is not challenging his conviction for forgery of a financial instrument, but is challenging the revocation of his probation in Harris County, Texas on July 2, 1999, with the use of fake, forged, counterfeit, surety bail bond contracts and judgment flowing from the theft of his personal identity flowing from a public corruption governmental real estate mortgage fraud scheme, that has been under investigation since 1999.

The Report and Recommendation recommends dismissing the petition because Petitioner states that he filed a previous 28 U.S.C. § 2254 petition in the United States District Court for the Southern District of Texas, Houston Division, and that the petition was dismissed as time barred. Petitioner's objections state that he was prevented from discovering the theft of his personal identity and therefore prevented from timely raising these claims of actual innocence sooner. Petitioner does not indicate when he discovered the alleged personal identity theft.

In his Petition, Petitioner states that on February 25, 2008, he filed the same complaint in the

United States District Court for the Southern District of Texas, Houston Division, and that the reason he is now filing the complaint in this Court is as follows: “. . . because the defendants has told cover up lies throughout the entire legal process since 1999. They have created cover up schemes and will continue unless this Court order them to appear in court with the original court records.”

Petitioner’s own assertions show that he is filing this successive petition because he is dissatisfied with the outcome of his habeas petition in the United States District Court for the Southern District of Texas, Houston Division. As the Report and Recommendation explains, “Because Petitioner has not obtained authorization from the Fifth Circuit Court of Appeals, this Court is unable to consider the merits of his case.”

This Court has made a *de novo* review of Petitioner’s objections and determined that they lack merit. This Court finds that the Magistrate Judge’s findings and conclusions are correct, and adopts them as the Court’s findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED** as successive;

ORDERS that Petitioner is **DENIED** a certificate of appealability; and

ORDERS that all motions not previously ruled on are denied.

So **ORDERED** and **SIGNED** this **30** day of **May, 2008**.



Ron Clark, United States District Judge